

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WALTER SCOTT

Plaintiff

v.

TESORO REFINING & MARKETING
CO. LLC and ANDEAVOR LLC

Defendants

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CIVIL ACTION NO. 5:20-cv-00731

NOTICE OF REMOVAL

Defendants Tesoro Refining & Marketing Company LLC (“Tesoro Refining”) and Andeavor LLC, pursuant to 28 U.S.C. § 1441(a) and (b), submit this Notice of Removal to remove the civil action now pending in the District Court of Bexar County, Texas, 438th Judicial District. In support of this Notice of Removal, Tesoro Refining and Andeavor state as follows:

1. Tesoro Refining and Andeavor LLC are the only defendants in a personal injury and premises liability action filed by Plaintiff Walter Scott in the District Court of Bexar County, Texas, 438th Judicial District, styled *Walter Scott v. Tesoro Refining & Marketing Co. LLC and Andeavor LLC*; Cause No. 2020-CI-07653

2. Andeavor LLC served was served with process in this case through its registered agent on June 5, 2020. *See* Exs. A, B. To date, Tesoro Refining has not been served with process. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

3. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, which provide for removal of civil actions concerning controversies between citizens of different

states. Removal is proper under 28 U.S.C. § 1332(a)(1), because there is complete diversity of citizenship between the parties and the requisite amount-in-controversy exists.

COMPLETE DIVERSITY EXISTS

4. Plaintiff is an individual who is a citizen of California. *See* Pl’s Orig. Pet. § III, attached hereto as Ex. A.

5. Defendants Tesoro Refining and Andeavor LLC are non-Texas citizens and were so at the time the lawsuit was commenced. Therefore, they are diverse from Plaintiff and not citizens of the forum State in which this action was filed.

6. Tesoro Refining is a Delaware limited liability company and its citizenship for diversity jurisdiction is determined by the citizenship of its members. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080-81 (5th Cir. 2008). Tesoro Refining is wholly owned by Western Refining Southwest, Inc., which is an Arizona corporation with its principal place of business in Ohio. Therefore, Tesoro Refining is a citizen of Arizona and Ohio.

7. Andeavor LLC is a Delaware limited liability company and its citizenship for diversity jurisdiction is determined by the citizenship of its members. *See id.* Andeavor LLC is wholly owned by Marathon Petroleum Corporation, a Delaware corporation with its principal place of business in Ohio. Therefore, Andeavor LLC is a citizen of Delaware and Ohio.

THE REQUISITE AMOUNT-IN-CONTROVERSY EXISTS

8. Plaintiff has failed to plead a specific range of the monetary relief being sought as required by Rule 47(c) of the Texas Rules of Civil Procedure. Nevertheless, Plaintiff specifically pleads for the application of a “Level 2” discovery plan under Rule 190 of the Texas Rules of Civil Procedure, which exempts Plaintiff’s case from the provisions that apply to suits in which a plaintiff seeks only monetary relief aggregating \$100,000 or less, including damages of any kind,

penalties, costs, expenses, pre-judgment interest, and attorney fees. *See* Pl.'s Orig. Pet. § III. As such, on its face, Plaintiff's pleading indicates that Plaintiff seeks monetary relief of at least \$100,000, satisfying the requisite amount-in-controversy requirement for diversity jurisdiction.

9. In addition, based upon the damages that are alleged in Plaintiff's Original Petition, it is apparent that Plaintiff is seeking damages in excess of \$75,000, exclusive of interest and costs. *See, e.g., id.* § VI (claiming damages for, among other things, past and future medical expenses, physical impairment, pain and suffering, and loss of earning capacity, as well as asserting a claim for punitive damages).

10. Therefore, the amount in controversy exceeds \$75,000, exclusive of interests and costs, and diversity jurisdiction exists under 28 U.S.C. § 1332(a).

COMPLIANCE WITH REMOVAL PROCEDURES

11. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty days of June 5, 2020, the date on which Andeavor LLC were served with Plaintiff's Original Petition.

12. Pursuant to 28 U.S.C. § 1441(a), the United States District Court for the Western District of Texas, San Antonio Division, is the federal district court for the district embracing the place where the action is pending.

13. Tesoro Refining and Andeavor LLC are serving written notice of the filing of this Notice of Removal upon Plaintiff and will cause a copy of this Notice to be filed with the Court Clerk of the District Court of Bexar County, State of Texas, in accordance with 28 U.S.C. § 1446(d).

14. All documents to be attached to a notice of removal pursuant to 28 U.S.C. § 1446(a) are attached hereto as Exhibits A-B.

15. Tesoro Refining and Andeavor LLC reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Tesoro Refining and Andeavor LLC remove to this Court the above-referenced action now pending in the District Court of Bexar County, Texas, 438th Judicial District.

Dated: June 22, 2020

Respectfully submitted,

SHIPLEY SNELL MONTGOMERY LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed with the Clerk of Court using the Western District of Texas CM/ECF System for filing and service on all counsel of record, in accordance with FED. R. CIV. P. 5(b)(2)(E), on June 22, 2020.

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BY E-SERVICE AND/OR ELECTRONIC MAIL

/s/ Joel Z. Montgomery
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